



STATE OF TENNESSEE COMPTROLLER OF THE TREASURY

TENNESSEE COURT SYSTEM

Performance Audit Report

October 2017

Justin P. Wilson, Comptroller



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October 4, 2017

The Honorable Randy McNally
Speaker of the Senate
and
The Honorable Beth Harwell
Speaker of the House of Representatives
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and
The Honorable Jeffrey S. Bivins
Chief Justice of the Supreme Court
Supreme Court Building
Nashville, Tennessee 37243

Ladies and Gentlemen:

We have conducted a performance audit of selected programs and activities of the Tennessee Court System for the period June 1, 2014, through May 31, 2017.

Our audit disclosed a finding, which is detailed in the Audit Conclusions section of this report. Management of the court system has responded to the audit finding; we have included the response following the finding. We will follow up the audit to examine the application of the procedures instituted because of the audit finding.

Sincerely,

Deborah V. Loveless, CPA
Director

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17/281



Division of State Audit

Tennessee Court System Performance Audit October 2017

Our mission is to make government work better.

AUDIT HIGHLIGHTS

We have audited the Tennessee Court System for the period June 1, 2014, through May 31, 2017. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, and procedures in the following areas:

- indigent defense;
- reporting requirements;
- juvenile courts;
- judicial and attorney performance; and
- miscellaneous fiscal and administrative functions.

Audit Period:

June 1, 2014, through May 31, 2017

Key Conclusions

Finding

- The Administrative Office of the Courts did not provide adequate internal controls in two specific areas (page 36).

Observations

The following topics are included in this report because of their effect on the operations of the Tennessee Court System and the citizens of Tennessee:

- The Tennessee Supreme Court authorized the Indigent Representation Task Force to review the indigent defense process, including issues noted in the prior finding (page 14).
- The Administrative Office of the Courts and court clerks have taken steps to address the prior audit finding for not complying with state statutes designed to keep firearms out of the hands of individuals with mental health issues (page 21).
- The Administrative Office of the Courts has made progress toward developing a general sessions data repository (page 24).

- As previously noted, the Governor's Council for Judicial Appointments lacked adequate conflict-of-interest policies and procedures, increasing the risk that biased voting will go undetected (page 31).
- Tennessee Continuing Legal Education requirements, though comparable to those of other states, do not include specific training for new attorneys (page 32).

Performance Audit Tennessee Court System

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Performance Audit Tennessee Court System

INTRODUCTION

AUDIT AUTHORITY

This is the report on the performance audit of the Tennessee Court System. Section 8-4-109, *Tennessee Code Annotated*, states the following:

The comptroller of the treasury is hereby authorized to audit any books and records of any governmental entity created under and by virtue of the statutes of the state which handles public funds when such audit is deemed necessary or appropriate by the comptroller of the treasury. The comptroller of the treasury shall have the full cooperation of officials of the governmental entity in the performance of such audit or audits.

The audit was conducted pursuant to Section 4-3-304, *Tennessee Code Annotated*, which requires the Department of Audit to audit all accounts and financial records of any state department, institution, office, or agency in accordance with both generally accepted auditing standards and procedures established by the Comptroller. An audit may include any or all of the following elements: financial, compliance, economy and efficiency, program results, and program evaluations.

BACKGROUND

The following constitutes a very general discussion of various aspects of Tennessee's legal system.

GENERAL BACKGROUND

As one of the three basic divisions of both the federal and state government, the judicial branch serves as a check and balance of the powers of the legislative and executive branches.¹ The legislative branch makes the laws. The executive branch enforces the laws and runs the day-to-day operations of government. Through the power of judicial review, the courts rule on the constitutionality of laws passed by the legislative branch and consider the legality of the executive branch's policies and regulations.

The Tennessee Court System's organizational chart is on page 8.

¹ Unless otherwise indicated, we obtained background information from the Tennessee Supreme Court's "Understanding Your Court System: A Guide to the Judicial Branch" and the Tennessee Secretary of State's *Tennessee Blue Book 2015-2016*.

TENNESSEE'S JUDICIAL FOUNDATION

Tennessee's judicial system has a constitutional foundation. According to Article VI, Section 1, of the Constitution of the State of Tennessee, "The judicial power of this state shall be vested in one Supreme Court and in such Circuit, Chancery and other Inferior Courts as the Legislature shall from time to time, ordain and establish."

TENNESSEE'S COURT STRUCTURE

The state operates within a non-unified court system, which means that each court enjoys a large degree of autonomy and has its own methods of conducting business.

Tennessee Supreme Court

The Tennessee Supreme Court is the highest court in the state and makes final decisions. The court, which normally meets in Jackson, Knoxville, and Nashville, consists of five justices, who are initially appointed by the Governor and subsequently elected by the state's citizens on a "yes (retain)/no (replace)" ballot every eight years. The Supreme Court justices elect one of their own to serve as chief justice.

The majority of cases in the Tennessee Supreme Court's workload are civil and criminal cases appealed from lower state courts. The justices may also perform the following tasks:

- interpret the laws and constitutions of Tennessee and the United States;
- assume jurisdiction over undecided cases in the Court of Appeals or Court of Criminal Appeals when there is special need for a speedy decision; and
- exercise appellate jurisdiction in cases involving state taxes, the right to hold public office, and issues of constitutional law.

Intermediate Appellate Courts

The intermediate appellate courts—the Court of Appeals and the Court of Criminal Appeals—hear civil and criminal cases, respectively, that are appealed from the trial courts. Each court consists of 12 members, who rotate sitting in panels of 3 in Jackson, Knoxville, and Nashville. Like the Tennessee Supreme Court justices, the appellate judges are elected on a "yes/no" ballot every eight years.

Trial Courts

The state's trial courts include circuit, chancery, criminal, and probate courts. Judges in these courts are chosen by popular election within their judicial districts.

Tennessee's 95 counties are divided into 31 judicial districts. Each district has circuit courts and chancery courts, as provided by the state constitution. Some districts also have legislatively established criminal courts and probate courts.

Circuit courts are courts of general jurisdiction in Tennessee. Circuit judges hear civil and criminal cases and appeals of decisions from general sessions, municipal, and juvenile courts. Criminal cases are tried in circuit court, except in districts with separate criminal courts established by the General Assembly.

By tradition, *chancery courts* constitute an example of the court system's English heritage. These equity courts are based on the English system, in which the chancellor acted as the "king's conscience." Chancellors may modify the application of strict legal rules and adapt the relief given to the circumstances of individual cases. Chancery courts handle a variety of issues including lawsuits, contract disputes, applications for injunction, and name changes. A number of matters, such as divorces, adoptions, and workers' compensation, can be heard in either chancery or circuit court.

Criminal courts are established by the General Assembly in districts where they are justified by heavy caseloads. In addition to having jurisdiction over criminal cases, criminal court judges hear misdemeanor appeals from lower courts and certain appeals from juvenile courts. In districts without criminal courts, circuit court judges handle criminal cases at the trial level.

Probate courts, as created by the General Assembly, have exclusive jurisdiction over the probate of wills and administration of estates. These courts also handle conservatorships and guardianships.

Courts of Limited Jurisdiction

The fourth level of courts in Tennessee is composed of the Courts of Limited Jurisdiction: general sessions, juvenile, and municipal courts. These courts are funded by their respective counties.

General sessions courts vary by county regarding jurisdiction, based on state laws and private acts. Each of Tennessee's 95 counties has a general sessions court, which hears civil and criminal cases. Civil jurisdiction is restricted to specific monetary limits and types of actions. Criminal jurisdiction is limited to (1) preliminary hearings in felony cases and (2) misdemeanor trials where defendants waive the right to a grand jury investigation and trial by jury in circuit or criminal court. General sessions judges also serve as juvenile judges, except in counties where the General Assembly has established separate juvenile courts.

The state's 98 *juvenile courts*² have exclusive jurisdiction in proceedings involving minors alleged to be delinquent, unruly, dependent, or neglected. Additionally, juvenile courts have concurrent jurisdiction with circuit, chancery, and probate courts in some districts.

Municipal courts, also known as city courts, have jurisdiction in cases involving violations of city ordinances. About 300 Tennessee cities have municipal courts with varying authority and jurisdiction.

² Seventeen of these courts are designated "Private Act" juvenile courts. The remaining 81 are general sessions courts with juvenile jurisdiction. With the exception of the courts in Bristol and Johnson City, the juvenile courts are county-based and administered with at least one court in each of the state's 95 counties.

LEGAL SYSTEM CASES

The legal system consists of two types of cases, civil and criminal. Differences between the two are explained in Table 1.

Table 1
Civil Versus Criminal Cases

	Civil	Criminal
Case Origination	One party (the plaintiff) who feels he or she was harmed brings a complaint against another party (the defendant).	The government (the plaintiff) prosecutes a person it believes has broken the law (the defendant).
Burden of Proof	Reasonable doubt is not required. A “preponderance of evidence” (proposition is more likely to be true than not true) is enough in most cases.	The guilt must be proven beyond a reasonable doubt.
Consequences	The plaintiff may request either monetary or equitable relief. <u>Monetary relief</u> is when the plaintiff asks for a cash award to remedy the situation. <u>Equitable relief</u> is when the plaintiff asks for the court to order the other party to do or not to do something.	If the defendant is convicted, he or she may have to serve time in jail or pay a fine.

Source: Compiled from various legal websites.

COURT ADMINISTRATION

The Administrative Office of the Courts (AOC) provides support to the Tennessee Supreme Court and the entire court system. The Supreme Court appoints a director to oversee the AOC. The AOC prepares the court system’s annual budget; provides judicial education, law libraries, computers and other equipment, and training and technical support for judges and other court personnel; assists judges with case assignments; administers payroll for the entire system; conducts orientation for new judges; administers the official state criminal court reporters system; provides assistance to judicial committees; compiles data; and disburses funds to court-appointed attorneys.

In the performance of these duties, the AOC director administers the business unit codes associated with the following functional areas or programs:³

³ We obtained this information from *The Budget, Fiscal Year 2016-2017* for the State of Tennessee.

1. Appellate and Trial Courts (302.01): Salaries and benefits for judges of the state trial and appellate courts and for their law clerks and other staff are paid from this code, which also includes funds for judges' travel expenses, law books, and other operational expenses.
2. Supreme Court Buildings (302.05): Funds for the operation, maintenance, and security of the Tennessee Supreme Court buildings in Nashville, Knoxville, and Jackson are disbursed from this code.
3. Child Support Referees (302.08): This code is used to account for the Child Support Referees Program, which provides personnel and operational funding to ensure the timely fulfillment of parents' financial obligations in child support cases.
4. Guardian ad Litem (302.09): This code funds the Guardian ad Litem Program, which provides payments to court-appointed advocates to represent the best interests of an indigent child or an incompetent person involved in dependency, neglect, abuse, or custodial disputes.
5. Indigent Defendants' Counsel (302.10): The Indigent Defendants' Counsel Program, accounted for in this code, provides funding for court-appointed counsel, experts, investigators, and other support services for indigents in criminal cases.
6. Civil Legal Representation Fund (302.11): The Civil Legal Representation Fund is used to provide payments for legal services for indigent clients in civil matters.
7. Verbatim Transcripts (302.12): Personnel and operational costs of court reporting and verbatim transcripts are charged to this code.
8. Court Interpreter Services (302.13): This code funds interpreter services, in accordance with the rules prescribed by the Tennessee Supreme Court, to persons with limited English proficiency who have a matter before the courts.
9. Tennessee State Law Libraries (302.15): Law libraries are maintained in Nashville, Knoxville, and Jackson. These libraries are closed to the public but provide legal resources to the state judiciary. Expenses for books and reference materials to ensure the libraries remain current are disbursed from this code.
10. Council of Juvenile and Family Court Judges (302.16): The Council of Juvenile and Family Court Judges informs judges and court staff of services available to children and families and provides training and assistance to juvenile courts on state and federal laws, regulations, and policies affecting children and families. The council is composed of 17 county-approved juvenile judges and general sessions judges who have juvenile court jurisdiction. The operational costs of the council are paid from this code.
11. Judicial Conference (302.18): This code funds the Tennessee Judicial Conference, an organization consisting of members of the Tennessee Supreme Court, Court of Appeals, and Court of Criminal Appeals, as well as trial court judges across the state. The conference provides continuing legal education and legal updates to judges, in part through annual training events.
12. Judicial Programs and Commissions (302.20): This code is used to provide operational funding for commissions appointed by the Tennessee Supreme Court to study issues,

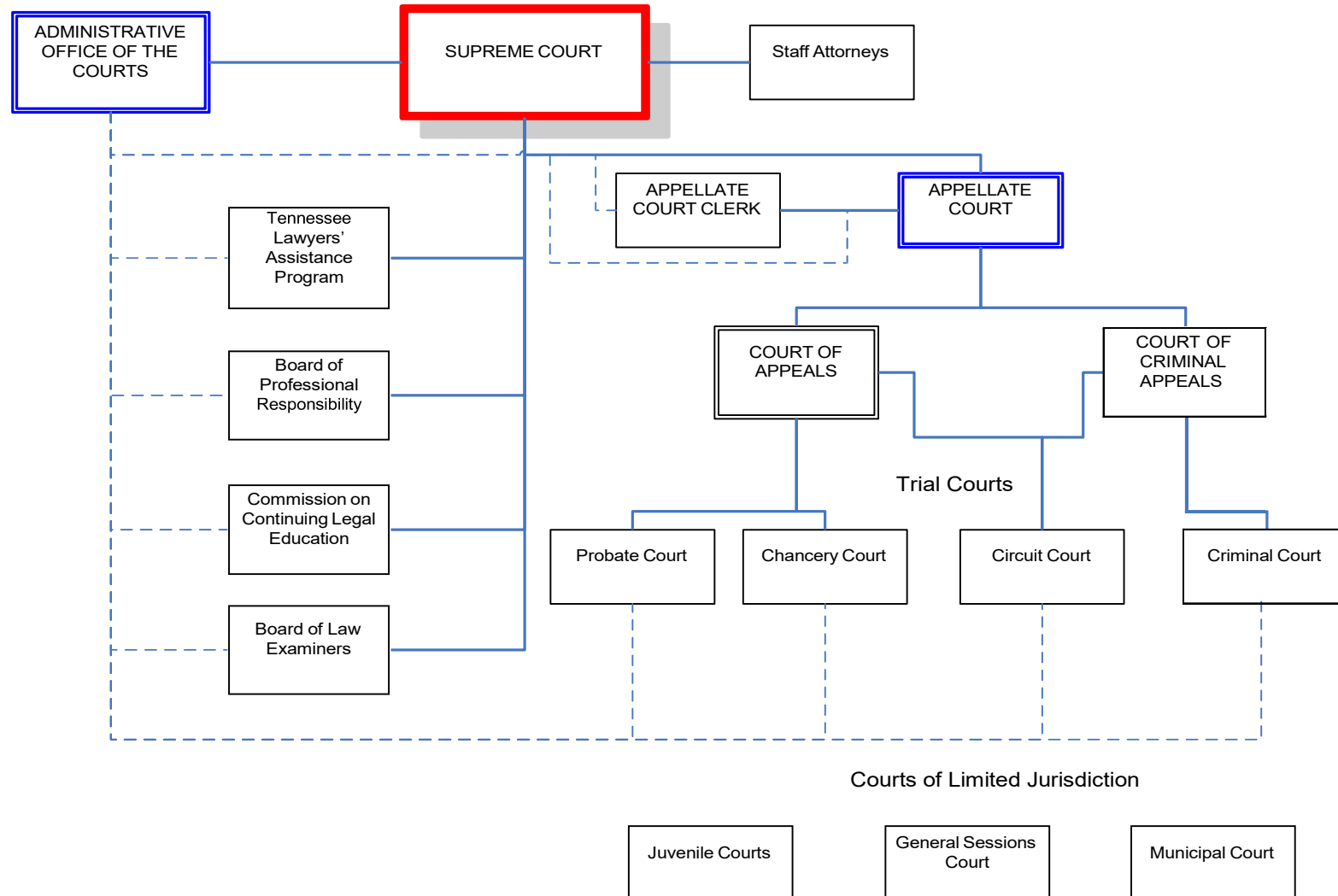
- monitor judicial programs, and make recommendations. The programs and commissions included under this code are the Court of the Judiciary, the Victim Offender Reconciliation Program, the Alternative Dispute Resolution Commission, and the Governor's Council for Judicial Appointments.
13. State Court Clerks' Conference (302.22): This conference, organized by the AOC, provides education and legal updates to the clerks, as required by law. Expenses related to the conference are paid from this code.
 14. Administrative Office of the Courts (302.27): Salaries and operating expenses of the AOC are disbursed from this code.
 15. Appellate Court Clerks (302.30): Salaries and operating costs for the Appellate Court Clerk's Offices are paid from this code. The offices are located at the Tennessee Supreme Court buildings in each of the three grand divisions of the state—Middle Tennessee in Nashville, East Tennessee in Knoxville, and West Tennessee in Jackson. The clerk of the appellate courts is appointed by the Supreme Court for a six-year term and is based in Nashville. The clerk oversees the chief deputies and deputy clerks who serve each grand division. The Appellate Court Clerk's Offices maintain court dockets and records and are responsible for administrative matters of the Tennessee Supreme Court, Court of Appeals, and Court of Criminal Appeals.
 16. Board of Law Examiners (302.35): The Board of Law Examiners governs the examination and admission of attorneys applying to practice law in Tennessee. Administering the state bar exam is the principal function of this board, and the state bar examination fees and annual licensing fees it receives allow it to be self-supporting. All operating revenues and costs are reported in this code.
 17. Board of Professional Responsibility (302.40): This code is used to account for the Board of Professional Responsibility, which reviews and investigates allegations of attorney misconduct and imposes disciplinary action on those who violate professional standards. The board also publishes ethics opinions, conducts seminars, and operates an ethics hotline for attorneys. The board is funded from a dedicated annual registration fee that is set by Tennessee Supreme Court rule and paid by each attorney.
 18. Tennessee Lawyers Assistance Program (302.50): The Tennessee Lawyers Assistance Program provides education and assistance to members of the bench and bar suffering from physical or mental disabilities that impair their ability to practice or to serve. The program is funded from a dedicated annual registration fee that is set by Tennessee Supreme Court rule and paid by each attorney. The fees collected and expenses incurred are recorded in this code.
 19. Continuing Legal Education (302.60): The Continuing Legal Education staff administers Tennessee Supreme Court Rule 21 governing continuing legal education annual requirements. Rule 21 authorizes the collection of annual certification or recertification fees from each attorney for operation of the program. All operating revenues and costs are reported in this code.

20. Client Protection Fund (302.65): This fund is used to reimburse claimants for losses caused by misconduct of attorneys licensed to practice in this state and is funded from the annual registration fee collected by the Board of Professional Responsibility.

In addition, the AOC provides administrative support to 16 boards, commissions, and committees. Expenditures for these boards, commissions, and committees are reported in the above business unit codes.

An organization chart of the court system is on the following page.

Tennessee Court System
Organizational Chart
June 2017



AUDIT SCOPE

We have audited the Tennessee Court System for the period June 1, 2014, through May 31, 2017. Our audit scope included a review of internal controls and compliance with laws, regulations, policies, and procedures in the following areas:

- indigent defense;
- reporting requirements;
- juvenile courts;
- judicial and attorney performance; and
- miscellaneous fiscal and administrative functions.

Management of the court system⁴ is responsible for establishing and maintaining effective internal control and for complying with applicable laws, regulations, policies, and procedures.

For our sample design, we used nonstatistical audit sampling, which was the most appropriate and cost-effective method for concluding on our audit objectives. Based on our professional judgment, review of authoritative sampling guidance, and careful consideration of underlying statistical concepts, we believe that nonstatistical sampling provides sufficient appropriate audit evidence to support the conclusions in our report. Although our sample results provide reasonable bases for drawing conclusions, the errors identified in these samples cannot be used to make statistically valid projections to the original populations. We present more detailed information about our methodologies in the Appendix on page 38.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

PRIOR AUDIT FINDINGS AND OBSERVATIONS

Section 8-4-109, *Tennessee Code Annotated*, requires that each state department, agency, or institution report to the Comptroller of the Treasury the action taken to implement the recommendations in the prior audit report dated July 2015. The Tennessee Court System filed its

⁴ For the purposes of our report, “management of the court system” as a whole refers to the Tennessee Supreme Court. In our detailed audit report sections, we assign responsibility for establishing and maintaining certain internal controls and complying with applicable laws, regulations, policies, and procedures to individual courts and personnel.

report with the Comptroller of the Treasury on January 14, 2016. We conducted a follow-up of all prior audit findings as part of the current audit.

RESOLVED AUDIT FINDING AND OBSERVATION

The current audit disclosed that the court system has corrected the previous audit finding concerning the Nashville Appellate Court Clerk's Office cash receipting process and the observation concerning the State Law Library Commission's meeting frequency.

The prior audit report contained an additional three findings and three observations. The current audit disclosed that the court system has made improvements, taken steps toward correcting, or is continuing to correct the findings and observations concerning the following:

Findings

- indigent defense determination guidelines;
- mental health and firearms reporting;
- general sessions caseload data reporting;

Observations

- assessment and collection of the indigent defense administrative fee; and
- Governor's Council (formerly Commission) for Judicial Appointments' conflict-of-interest policies.

We will provide an update on the prior observation involving the Juvenile Court of Memphis and Shelby County's implementation of U.S. Department of Justice report recommendations at a later date.

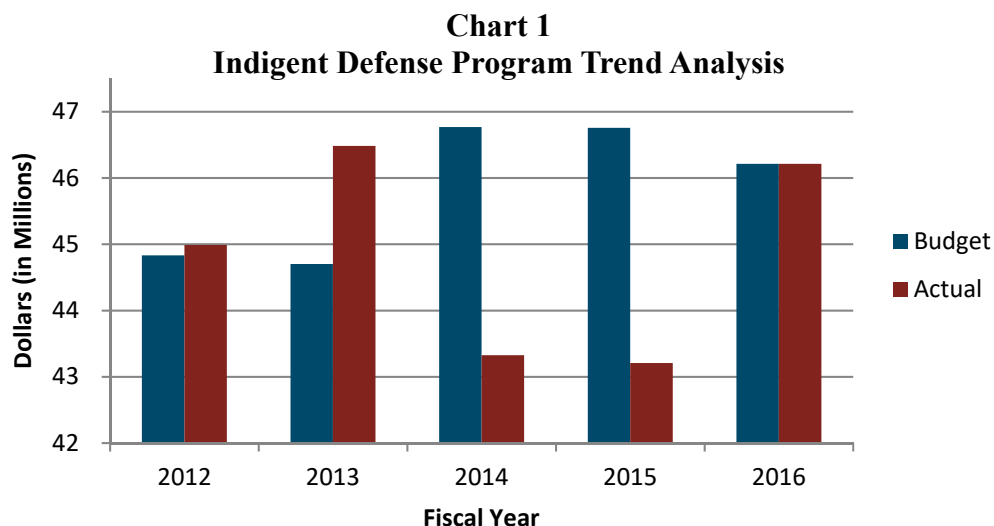
AUDIT CONCLUSIONS

INDIGENT DEFENSE PROGRAM

Administration of Tennessee's Indigent Defense Program

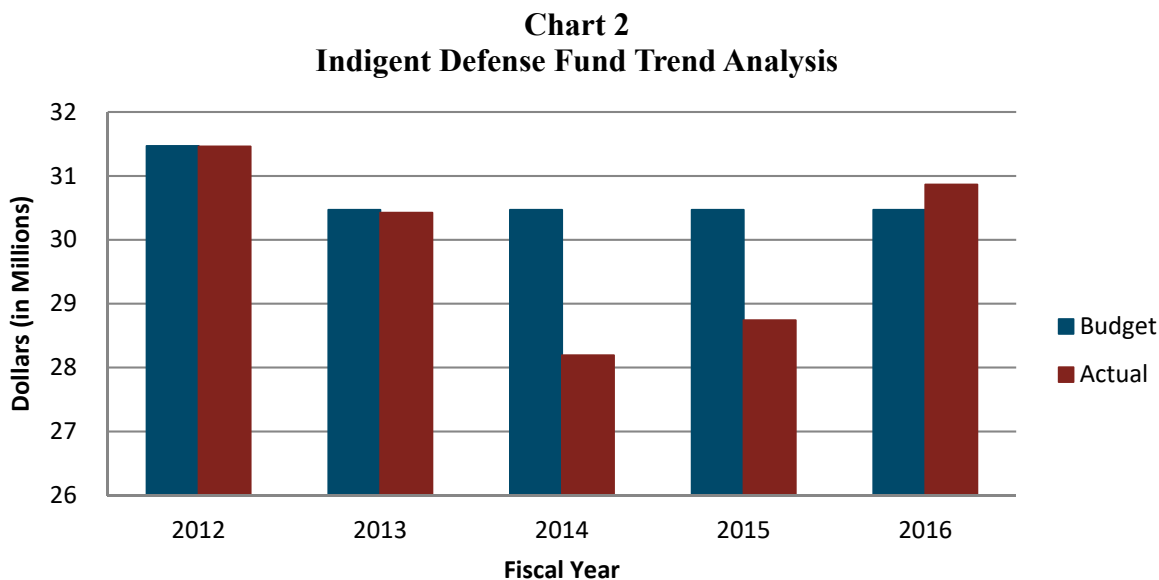
The State of Tennessee's indigent defense program provides legal services for individuals who are constitutionally entitled to legal counsel but who are unable to pay for such services. The Administrative Office of the Courts (AOC) administers Tennessee's indigent defense program, which includes the following areas: Guardian ad Litem, Indigent Defendants' Counsel (the indigent defense fund), the Civil Legal Representation Fund, Verbatim Transcripts, and Court

Interpreter Services. These programs are all included in the same appropriations bill and allow the AOC to shift funding across programs.



Note: The 2013 actual amount includes expenditures related to Court Interpreter Services; however, neither the 2012 nor 2013 budgets included a stand-alone business unit for Court Interpreter Services.

The indigent defense fund uses set fees to compensate attorneys, interpreters, expert witnesses, and investigators who provide services to indigent defendants based on specific guidelines outlined in Tennessee Supreme Court Rule 13, “Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.” The indigent defense fund, which totaled \$30,863,000 of the court system’s \$134,543,600 actual expenditures for fiscal year 2016 (23%), constitutes a major portion of the court system’s expenditures.



U.S. Supreme Court Rulings

The Sixth Amendment to the U.S. Constitution guarantees all people accused of a crime the right to legal counsel. In the 1963 decision of *Gideon v. Wainwright*, the U.S. Supreme Court ruled that individuals charged with a serious crime who cannot afford to hire an attorney are entitled to the appointment of one at the government's expense. After that landmark ruling, the U.S. Supreme Court issued a series of decisions to clarify the types of cases that include the right to counsel. The types of cases for which legal services are available include the following: criminal, juvenile delinquency, child welfare matters, judicial hospitalization, and contempt.

Although the U.S. Supreme Court has provided guidance on appointing attorneys for indigent individuals, neither constitutional law nor congressional statute nor U.S. Supreme Court interpretation has mandated a methodology for states to fund indigent defense programs. The State of Tennessee has opted to fund its program primarily with general fund state tax dollars.

Process for Appointing Legal Counsel

As of May 31, 2017, Tennessee's indigent defense system allowed the presiding case judge to appoint the public defender or a private attorney to represent the indigent defendant. In 1989, Tennessee created a statewide public defender system, which includes a popularly elected district public defender in each judicial district. If the public defender has a conflict of interest that prevents representation, the judge overseeing the case appoints a private attorney instead. A judge also appoints a private attorney if the public defender makes a clear and convincing case that the additional appointment would prevent the public defender from providing effective representation to his or her current caseload.

Assessment of Administrative Fee

Sections 37-1-126 and 40-14-103, *Tennessee Code Annotated*, direct the courts to charge a defendant who is provided with court-appointed counsel a nonrefundable administrative fee. In accordance with state law, the court assesses the administrative fee at the time of appointment of counsel, and the fee assessed should equal at least \$50, unless the court finds that the defendant lacks financial resources to pay that amount. Upon such a finding, the court possesses the authority to waive or reduce the administrative fee. Conversely, if the court finds that the defendant has financial resources to pay a higher administrative fee, then the court has the authority to charge up to \$200. State law stipulates that the defendant must pay the administrative fee prior to the disposition of the case or within two weeks following the appointment of counsel, whichever occurs first.

Prior Audit Report

During the prior audit, we noted a finding for courts across the state not consistently applying Tennessee Supreme Court rules and *Tennessee Code Annotated* provisions. We recommended that the Supreme Court and the General Assembly work together to provide more detailed guidance and procedures for the indigence determination process, with specific

instructions for verifying information submitted by applicants and for maintaining all relevant documentation related to the determination.

Additionally, during the prior audit, we published an observation that consistent assessment and collection of the administrative fee could help maximize revenues and offset some of the indigent defense fund expenditures. We recommended the following actions:

- that the Tennessee Supreme Court work with the General Assembly to add an exemption from the fee only for individuals who provide sufficient proof that they are unable to pay it;
- that the Supreme Court, the General Assembly, and the AOC jointly establish the type of proof required; and
- that the General Assembly consider incorporating actions to take if an individual fails to pay the assessed administrative fee.

Audit Results

1. Audit Objective: Did management address the prior indigent defense finding by making progress in ensuring that courts across the state consistently applied Tennessee Supreme Court rules and *Tennessee Code Annotated* provisions?

Conclusion: Based on testwork performed, the Tennessee Supreme Court provided instructions to all trial and appellate judges regarding Supreme Court Rule 13, “Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants.” Additionally, the Supreme Court appointed the Indigent Representation Task Force to review the complete indigent defense process. As part of the report released April 3, 2017, the task force made recommendations that would increase consistency across the state (see **Observation 1**).

2. Audit Objective: Did management take steps to maximize revenues for the indigent defense fund, as discussed in the prior observation?

Conclusion: We found that while administrative fee revenues increased, the percentage of instances in which the judge waived the fee also increased (see **Observation 1**).

3. Audit Objective: Did management accurately present the indigent defense fund budget?

Conclusion: Our review disclosed that management accurately presented the indigent defense fund budget. Actual expenditures were consistent with the amount shown in the budget, with the exception of fiscal year 2016. In that fiscal year, the actual exceeded the budgeted amount; however, the overall indigent program was operating within budget.

Observation 1 – The Tennessee Supreme Court authorized the Indigent Representation Task Force to review the indigent defense process, including issues noted in the prior finding

In accordance with the Sixth Amendment to the U.S. Constitution and various U.S. Supreme Court decisions, individuals accused of a criminal offense have the right to legal counsel. Individuals unable to afford an attorney (deemed “indigent” defendants) are entitled to the appointment of an attorney at the government’s expense. In Tennessee, these federal mandates are fulfilled in part through the indigent defense fund, which compensates attorneys, interpreters, expert witnesses, and investigators for providing services to indigent defendants. Individual courts possess the authority to determine whether an individual is indigent based on specific criteria outlined in Tennessee Supreme Court Rule 13, “Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants,” and Section 40-14-202, *Tennessee Code Annotated*. State statutes also give the Administrative Office of the Courts (AOC) the authority to administer the indigent defense fund.

During the prior audit, our review of the program noted inconsistencies in the guidance and application of guidance in the following areas:

- a. presentation of eligibility information in Tennessee Supreme Court Rule 13 and Section 40-14-202, *Tennessee Code Annotated*; and
- b. adherence to indigent determination guidelines in Tennessee Supreme Court Rule 13.

During the current audit, we were able to verify that Tennessee Supreme Court Rule 13 and *Tennessee Code Annotated* were consistent; therefore, this portion of the prior finding will not be discussed further in this observation.

Indigent Representation Task Force Report

In October 2015, the Tennessee Supreme Court appointed the Indigent Representation Task Force to examine the indigent representation system. The task force consisted of 12 members representing the private and public sectors of the state, as well as all 3 branches of state government. In April 2017, the task force released the findings of its 1.5-year review of the indigent representation system.

The task force’s report included an entire section on the determination of indigence, which lists the following recommendations:

- 1. Clear criteria for the entitlement to appointed counsel should be developed, including certain presumptions for eligibility, such as income thresholds or other qualifying metrics, such as eligibility for public assistance.
- 2. While judges should retain the discretion to determine eligibility for appointed counsel, they should be relieved of the responsibility to conduct the screening and to obtain the information needed to make the determination.

3. Judges should be expressly required to appoint the public defender in a criminal proceeding unless the public defender has represented in writing that it cannot provide representation because of an ethical conflict of interest or a reason satisfactory to the court. All orders appointing private counsel should state specific reasons for not appointing a public defender.
4. While trial courts should retain the discretion to appoint private counsel when the public defender cannot be appointed, appointment decisions should be based solely on uniform criteria based on education, training, experience, and demonstrated competency.
5. A process should be established for certifying lawyers seeking appointments under Tennessee Supreme Court Rule 13 based on their education, training, experience, and demonstrated competency.
6. There should be a continuation of the currently existing claw-back mechanism whereby costs of counsel can be recovered against a defendant if it is discovered that the party was ineligible for appointed counsel.

According to the AOC's General Counsel, the Tennessee Supreme Court has already shown an interest in addressing items noted in the task force's report and believes that the report can be used as a tool to improve the indigent process across the state.

Attorney Compensation

The task force also examined whether attorneys are fairly compensated under Tennessee Supreme Court Rule 13. Currently, the rule sets hourly rates as follows:

Table 2
Current Hourly Rates for Tennessee's Appointed Attorneys

Non-Capital Cases		Capital Cases	
Out-of-Court	In-Court	Out-of-Court	In-Court
\$40	\$50	\$60	\$100

Based on our review of the task force's report and meeting minutes, there was a consensus across the state that appointed attorneys do not receive reasonable compensation for indigent representation. Accordingly, the task force included a recommendation in its report for changes to the compensation model for private counsel appointed under Tennessee Supreme Court Rule 13. The recommendation requests removal of the distinction between "out-of-court" and "in-court" and requests an increase in the pay rate to between \$75 and \$125 per billable hour.

We discussed the task force's recommendation to increase the hourly rate for appointed attorneys with the AOC's Director of Fiscal Services to determine the impact on the budget for the state's indigent defense fund, which was \$30,468,000 for fiscal year 2017. Based on our discussion, we estimated the potential effect that a rate increase would have on the indigent defense fund's budget:

Table 3
Projected Indigent Defense Fund Budget
Based on Proposed Rate Increases

Hourly Rate	Estimated Required Budget Increase	Estimated Total Budget
\$ 60	\$14,749,263	\$45,217,263
65	18,602,593	49,070,593
70	22,455,922	52,923,922
75	26,309,252	56,777,252
80	30,162,581	60,630,581
85	34,015,911	64,483,911
90	37,869,240	68,337,240
95	41,722,570	72,190,570
100	45,575,899	76,043,899
105	49,429,229	79,897,229
110	53,282,558	83,750,558
115	57,135,888	87,603,888
120	60,989,217	91,457,217
125	64,842,547	95,310,547

Source: The AOC's Director of Fiscal Services provided us with the figures for the current attorney in-court and out-of-court hours. We then performed calculations to adjust for the proposed system.

As our estimates show, the state's budget for indigent defense will increase substantially in order to cover a rate increase. One way to help offset a portion of such an increase involves ensuring that the associated administrative fee is assessed and obtained from individuals who are appointed counsel.

Administrative Fee Assessment

State law directs court judges to charge individuals who have been determined to be indigent an administrative fee at the time counsel is appointed and directs county clerks to collect these assessed fees. Sections 40-14-103 and 37-1-126, *Tennessee Code Annotated*, state the following:

A defendant, who is provided with court-appointed counsel . . . shall be assessed by the court at the time of appointment a nonrefundable administrative fee in the amount of fifty dollars (\$50.00). The administrative fee shall be assessed only one time per case and shall be waived or reduced by the court upon a finding that the defendant lacks financial resources sufficient to pay the fifty-dollar fee.

Additionally, these sections (a) allow the court to charge up to \$200 upon finding that the defendant has financial resources to pay a higher amount and (b) require the defendant to pay any assessed fee prior to the disposition of the case or within two weeks following the appointment of counsel, whichever occurs first.

During the prior audit, we surveyed judges across the state and examined the Administrative Fee for Appointed Counsel reports for calendar years 2011 and 2012 to determine the origin of the inconsistent assessment and collection of the indigent defense administrative fee. The results from the prior audit showed that a lack of awareness of the fee; a lack of detailed assessment procedures; and the courts' high degree of autonomy contributed to the inconsistent assessment and collection of the administrative fee.

For the current audit, we compared the expenditures from the state's indigent defense fund to the administrative fees for indigent defense collected by the Tennessee Department of Revenue for 2012 through 2016 in Table 4.

Table 4
Indigent Defense Fund Expenditures Compared
to Administrative Fee Revenues

Fiscal Year	Revenues	Expenditures
2012	\$ 1,734,561	\$ 35,571,086
2013	1,880,386	32,386,052
2014	1,912,981	34,364,891
2015	1,896,622	31,349,311
2016	1,813,504 ⁵	36,376,198

Source: The 2012–2016 budgets for the State of Tennessee and the 2012–2016 Administrative Fee for Appointed Counsel reports.

Upon examining the Administrative Fee for Appointed Counsel reports for calendar years 2012 through 2016, we noted the following:

- courts have increased administrative fee revenues for indigent defense by increasing the fees collected from individuals ordered by a judge to pay the fees;
- over the five-year period, the number of individuals who were appointed counsel decreased while the amount of fees deposited to the Department of Revenue increased; and
- although the percentage of individuals whose administrative fees were waived by a judge increased and the percentage of individuals ordered to pay the fees decreased, the average amount deposited per individual ordered to pay the fees increased due to the courts' increased efforts to charge and collect the administrative fees.

For details, see Chart 3 and Table 5.

⁵ The Administrative Fee for Appointed Counsel report for fiscal year 2016 was published on June 6, 2017, without data from Shelby County Criminal Court for November and December 2016. The AOC will update or amend the 2016 report once the data is received from Shelby County Criminal Court. We estimate that the total amount of revenues reported for 2016 could increase by as much as \$21,000, once the data is received.

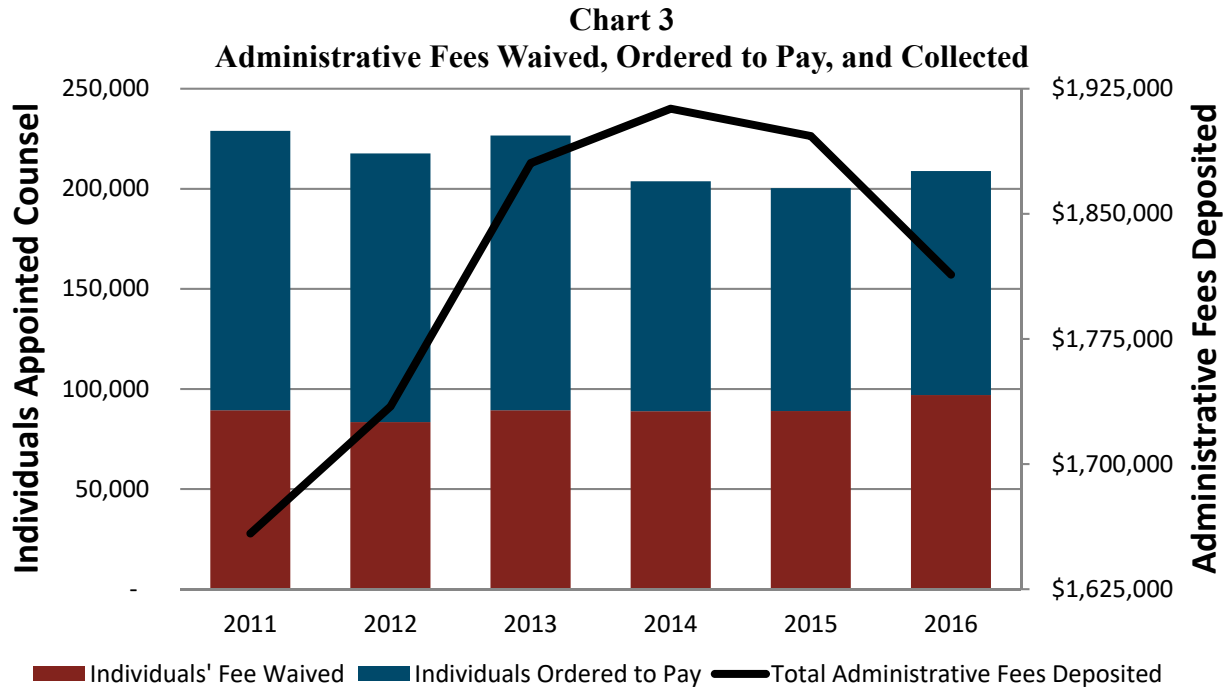


Table 5
Summary of Administrative Fees

Calendar Year	Individuals Appointed Counsel	Individuals Whose Fees Were Waived	Individuals Ordered to Pay	Total Administrative Fees Deposited
2011	228,932	89,322	139,610	\$1,658,375
2012	217,634	83,441	134,193	\$1,734,561
2013	226,545	89,344	137,201	\$1,880,386
2014	203,733	88,878	114,855	\$1,912,981
2015	200,262	88,933	111,329	\$1,896,622
2016 ⁶	208,812	96,927	111,885	\$1,813,504
Total	1,077,106	439,918	637,188	\$9,082,925

Source: 2011 through 2015 Administrative Fee for Appointed Counsel reports, along with auditor calculations.

Although the administrative fees collected for indigent defense are revenues that are deposited into the state's general fund and do not directly offset indigent defense expenditures, consistently assessing and collecting the administrative fee would partly counteract the estimated increase in expenditures.

⁶ Due to a change in computer systems, Shelby County Criminal Court data was not available for November and December 2016. The AOC will update the Administrative Fee for Appointed Counsel report for 2016 when the data is received.

REPORTING REQUIREMENTS

The Tennessee Court System must comply with various reporting requirements promulgated in state statute. As part of our testwork, we reviewed the courts' adherence to two different reporting provisions—mental health and general sessions data. *Tennessee Code Annotated* stipulates that courts must report the following:

- 1) Individuals committed to a mental institution or adjudicated as a “mental defective” in a court of law must be reported to the Federal Bureau of Investigation’s (FBI) National Instant Criminal Background Check System (Sections 16-1-117, 16-3-812, 16-10-213, 16-11-206, 16-15-303, 16-16-120, 39-17-1316, and 39-17-1351). The FBI’s system provides information to both gun dealers running background checks and to the Tennessee Department of Safety and Homeland Security staff processing concealed handgun carry permit applications.
- 2) General sessions criminal and civil caseload information must be reported to the Administrative Office of the Courts (AOC) for evaluation of judicial needs (Sections 16-1-117, 16-3-803, 16-3-809, 16-15-303, and 18-1-105).

The court clerks use a variety of case management systems to comply with both of these reporting requirements. The AOC maintains the Tennessee Court Information System (TnCIS), an integrated case management and accounting software system that addresses the statutory responsibilities of the clerks of the general sessions, chancery, circuit, and juvenile courts. In addition, TnCIS provides statewide reporting and data transfer capabilities to the AOC, Tennessee Bureau of Investigation, Department of Safety and Homeland Security, and Department of Revenue. Some court clerks operate in-house case management systems rather than TnCIS. State law requires, however, that all automated case management systems have the same functionality as TnCIS to promote compliance with the reporting requirements.

Prior Audit Report

During the prior audit, we reported in a finding that court system management had not fully complied with state laws regarding mental health and firearms reporting by ensuring that

- the AOC adequately tracked mental health report submissions,
- court clerks reported submissions within the three-business-day time frame established by state statute, and
- various courts used compliant automated reporting systems.

We recommended that the AOC’s Director of Information Technology and Application Support Manager implement an effective tracking system to ensure courts comply with state law. The clerks should ensure they submit to the National Instant Criminal Background Check System within three business days written notification of all instances in which a court commits an individual to a mental institution or adjudicates him or her as a mental defective. In addition, the

court clerks should ensure they operate an automated system that is functionally equivalent to TnCIS.

In February 2016, the AOC received a National Instant Criminal Background Check System Act Record Improvement Program grant to implement an automated monitoring system. The AOC has also contracted with an independent individual to perform compliance monitoring of county clerks' reporting.

We published a separate finding in the prior audit report that because the AOC was unable to develop appropriate criminal and civil caseload data collection procedures for general sessions, court clerks made incomplete and inaccurate submissions to the AOC, in violation of state statute. In our recommendation, we said that due to the complexity and volume of the general sessions caseload data, a reliable data repository or warehouse system would assist the AOC and the courts in complying with *Tennessee Code Annotated* provisions. The Director of Fiscal Services should continue to actively pursue funding to implement such a system. In addition, the Director of Information Technology should continue to design a data repository system that would allow the AOC to receive, collect, and analyze all general sessions caseload data required by state statute.

Audit Results

1. Audit Objective: Did Administrative Office of the Courts (AOC) personnel and court clerks correct the prior finding by implementing improvements to fully comply with state statutes designed to keep firearms out of the hands of individuals with mental health issues?

Conclusion: The automated monitoring system was still being designed during our audit; therefore, we were unable to test whether the Tennessee Court System's actions thus far had fully corrected the prior finding (see **Observation 2**).

2. Audit Objective: Did management address the mental health reporting problems identified by the independent monitor, including implementing actions that would prevent the same problem from recurring in the future?

Conclusion: Since the AOC has strictly a monitoring role over mental health reporting, office management discussed the reporting problems with the county clerks and requested that they submit corrective actions to address any noted issues (see **Observation 2**).

3. Audit Objective: Did the AOC correct the prior finding by developing appropriate criminal and civil caseload data collection procedures for general sessions courts?

Conclusion: We found that the AOC has taken steps to implement a general sessions data repository. The repository was still in the development phase during our audit; therefore, we were unable to test whether the AOC had fully corrected the prior finding (see **Observation 3**).

Observation 2 - The Administrative Office of the Courts and court clerks have taken steps to address the prior audit finding for not complying with state statutes designed to keep firearms out of the hands of individuals with mental health issues

During the prior audit, we noted that Tennessee Court System management had not fully complied with state laws regarding mental health and firearms reporting by ensuring that

- the Administrative Office of the Courts (AOC) adequately tracked mental health report submissions,
- court clerks timely reported submissions, and
- various courts used compliant automated reporting systems.

Background Information

Courts Required to Report

Section 16-1-117(a)(6)(A), *Tennessee Code Annotated*, requires court clerks to submit reports to the Federal Bureau of Investigation's (FBI) National Instant Criminal Background Check System (NICS) database within three business days whenever a court of law

- commits an individual to a mental institution (known as an involuntary committal), or
- adjudicates him or her as a "mental defective."

According to Section 16-10-213(a)(1), adjudication as a mental defective means

(A) A determination by a court in this state that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition or disease:

- i. Is a danger to such person or to others; or
- ii. Lacks the ability to contract or manage such person's own affairs due to mental defect;

(B) A finding of insanity by a court in a criminal proceeding; or

(C) A finding that a person is incompetent to stand trial or is found not guilty by reason of insanity.

Both gun dealers and the Department of Safety and Homeland Security must check the NICS database before making eligibility determinations involving firearms. Therefore, without a complete and accurate database, individuals with mental health issues may still be able to obtain a firearm from a gun dealer or a concealed carry permit from the Department of Safety and Homeland Security. State law requires the following courts to submit mental health reports:

Table 6
Courts Required to Submit Mental Health Reports

Court Type	<i>Tennessee Code Annotated</i> Section
Circuit	16-10-213
Criminal	16-10-213
Chancery	16-11-206
General Sessions	16-15-303
County	16-16-120

Role of the Administrative Office of the Courts

Effective July 1, 2013, the General Assembly revised Section 16-1-117(a)(6)(B), *Tennessee Code Annotated*, to require the AOC to submit mental health reports to the FBI within three business days for all court clerks unable to make the submissions themselves. Additionally, pursuant to Section 16-1-117(a)(6)(D), the AOC must provide written notification to any court not found to be in compliance with reporting requirements. If noncompliance continues for another reporting period, then the AOC is also responsible for notifying the judges, district attorneys general, public defenders, and court clerks in the district where the noncompliant office is located.

In order to keep track of whether the courts have submitted information to the NICS database, the AOC Application Support Manager has requested that each clerk submit one of the following email notifications on a monthly basis:

- 1) a statement regarding whether the court made a mental health report submission,
- 2) a carbon copy of the report submission to the NICS database, or
- 3) a request for the AOC to make the submission to the database on behalf of the court.

The Application Support Manager developed a mental health commitment reporting spreadsheet to track whether or not courts submitted information to the NICS database. The spreadsheet contains columns for county name, clerk name, clerk type, and jurisdiction. Furthermore, the Application Support Manager established a column for each month and used clerks' emails to mark whether the commitments had been reported or to mark if the courts had no mental health commitments to report. Courts may also be exempt from the reporting requirement if their jurisdiction does not have a mental healthcare facility capable of diagnosing mental health issues.

Actions Taken Since the Prior Audit

Administrative Office of the Courts' Response to Prior Finding

We determined through inquiry and inspection that the AOC has implemented the following improvements in response to the prior audit finding:

- communicating court clerks' responsibility to report involuntary committals, among other responsibilities, via presentations and training seminars at the state court clerks' conferences each year;
- verifying, at least annually, that court clerks previously exempt from reporting involuntary committals remain eligible for exemption;
- communicating to attorneys representing indigent defendants involved with mental health hearings of their responsibility to file orders in a timely manner;
- designating a Lead Business Analyst in August 2015 to update and monitor the mental health reporting spreadsheet and to contact clerks that have not contacted the AOC monthly to determine whether any involuntary committals needed to be reported;
- continuing to report manually for any court clerks whose case management systems cannot report electronically to the FBI; and
- securing \$225,000 in funding from a NICS Act Record Improvement Program grant (via the Department of Finance and Administration's Office of Criminal Justice Programs) for the period February 1, 2016, through September 30, 2017, (a) to create an automated monitoring system to verify the timely reporting to the NICS database by court clerks, including periodic verifications of exempt status for those courts previously marked as exempt from reporting, and (b) to hire contract personnel to perform annual on-site compliance audits in order to monitor and verify the timeliness, accuracy, and reliability of court clerks' submissions to the NICS database.

Results of Compliance Monitoring

We reviewed the June 2016 NICS Compliance Report completed by contract personnel hired by the AOC to conduct the on-site reviews of court clerks' submissions to the NICS database during May 2016. The on-site reviews included 16 courts in 13 counties across Tennessee and identified deficiencies in 59 of the 200 case files reviewed (30%) that resulted from errors and noncompliance on behalf of 12 of the 16 courts (75%). Specifically, the report noted the following instances of noncompliance:

- Information was not checked for accuracy prior to submission to the NICS database. Spelling and typographical errors, such as misspelled names or transposed birthdates, made while entering the information may allow a person who should be prohibited to purchase guns to do so, and vice versa.
- In one case, only one employee had access to enter case information into the NICS database. If this single employee works part-time or is out of the office on vacation or for other reasons, the court clerk's office may be prevented from submitting the required information within three business days.
- In another case, judges and attorneys did not timely submit case files to the court clerk's office. This delay may impede compliance with the three-business-day reporting time frame.

- The individuals making the NICS database submissions overlooked unsuccessful attempts. Specifically, they did not open the automatic reply emails from the database stating whether the submissions were accepted or rejected, since the email subject line remained the same regardless. Submissions rejected by the database that are not corrected quickly may prevent the court clerk's office from successfully submitting the information within three business days.

We determined through inquiry and inspection that the contract monitor immediately brought these deficiencies to the attention of the respective court clerks to be addressed. However, due to state and federal laws that protect personal information in firearms transactions beyond reasonable inquiries by law enforcement during the course of a criminal investigation or under the authority of a properly authorized subpoena or search warrant, we were not able to determine whether or not the aforementioned deficiencies allowed a person who should be prohibited to purchase guns to do so, and vice versa. The results of the report also opened dialogue between the AOC and the respective court clerks about solutions and preventative actions to ensure compliance with mental health reporting requirements.

Based on our review of the compliance monitoring, we noted the following areas that the AOC should consider addressing before the next monitoring cycle:

- clearly identifying the sampling plan;
- detailing the documentation reviewed;
- documenting the standards followed by the reviewer;
- documenting all errors, corrective actions taken by court clerks, and any subsequent follow-ups to ensure errors are corrected; and
- adjusting the requirement from ensuring that submissions are reported within three days to ensuring that submissions are both accurate and completed within three days.

Current Audit Update

According to the Information Technology Director, the AOC has received verbal confirmation that the grant contract providing \$225,000 in funding from the NICS Act Record Improvement Program will be extended through December 31, 2017. The AOC plans to hire contract personnel to perform on-site monitoring in mid-2017 and launch a pilot program for the automated monitoring system by the end of 2017.

Observation 3 – The Administrative Office of the Courts has made progress toward developing a general sessions data repository

Section 16-1-117(a)(1–3), *Tennessee Code Annotated*, requires the Administrative Office of the Courts (AOC) to “collect, develop, and maintain” court caseload data, including for general sessions courts. To assist the AOC, the clerks of each court must report “uniform statistical

information,” such as the case verdict, on all criminal and civil cases. We noted in a prior audit finding, however, that

- since the AOC’s data collection forms only referenced partial criminal caseload data and no civil caseload data, the clerks made incomplete submissions; and
- concerns existed surrounding the accuracy of the limited data the clerks had been submitting.

We determined that these deficiencies were primarily rooted in the lack of funding to build a centralized data repository. Specifically, for six years, AOC management had sought funding to create a general sessions data repository but had been unsuccessful. Finally, in fall 2012, AOC management requested and then received \$1.25 million for use in fiscal year 2014 to conduct a study to determine system requirements for a general sessions data repository.

For our current audit, we found that the AOC has continued to move forward with plans to develop the repository.

Background Information

In 2001, the Comptroller of the Treasury’s Office of Research and Education Accountability (OREA, then the Office of Research) issued a report titled *The Need for Standardized Caseload Data in Tennessee Courts*. In its report, OREA concluded that the state lacked accurate, standardized caseload data from general sessions courts and that without this data, the Comptroller of the Treasury could not provide updates to the weighted caseload studies used to allocate judicial resources. To remedy this deficiency, OREA recommended, in part, that the judicial system establish a repository to collect general sessions caseload data statewide. OREA further suggested that, beginning in fiscal year 2003, the General Assembly require all general sessions courts to report caseload data to the AOC using a standard case definition.

In response to the OREA report, the General Assembly, with the passage of legislation that became Section 16-1-117(a)(1–3), *Tennessee Code Annotated*, established a standard case definition and directed the general sessions courts to begin submitting—and the AOC to begin collecting—caseload data on July 1, 2003. In order to address the requirement in Section 16-1-117(a)(4) to “create forms to be used by each court in reporting the caseload data,” the AOC developed a temporary reporting tool for criminal cases but did not develop any procedures for reporting civil cases.

Current Audit Update

According to the Information Technology Director, the AOC has secured \$1.7 million in recurring funding, which will provide seven positions in its fiscal year 2017 budget to design and implement the general sessions data repository. The AOC was also successful in obtaining a technical assistance grant for \$49,963 from the State Justice Institute, which was established by federal law in 1984 to award grants to improve the quality of justice in state courts and foster efficient solutions to common issues faced by all courts. This grant covered the period July 1, 2015 through June 30, 2016.

The AOC is using the Department of Finance and Administration’s Strategic Technology Solutions’ Data Warehouse Group to develop the data warehouse side of the repository. In September 2016, the AOC entered into a contract with the Data Warehouse Group to compile, convert, and format raw data for the repository. The AOC is developing the user interface portion, which will allow users to query and summarize the data. According to the Information Technology Director, the general sessions data repository should be operational at the beginning of calendar year 2018.

JUVENILE COURTS

Organizational Structure

Tennessee has 98 juvenile courts, 17 of which are designated “Private Act” juvenile courts. The remaining 81 are general sessions courts with juvenile jurisdiction. With the exception of the courts in Bristol and Johnson City, the juvenile courts are county-based and administered with at least one court located in each of the state’s 95 counties. Due to their decentralized nature, juvenile court systems and practices vary widely and tend to reflect the needs and preferences of the people living in that particular community.

Jurisdiction

Pursuant to state law, a “juvenile” is defined as any individual under the age of 18 who has not been previously transferred to adult court. Juvenile courts deal not only with delinquency and status offenses, but also with issues concerning dependency and neglect; child abuse; child support; custody; establishing parentage; visitation; and the need for medical or mental health treatment for children.

Prior Audit Report

The prior audit included an observation concerning the Juvenile Court of Memphis and Shelby County’s work with the U.S. Department of Justice. We will follow up on the status of this observation at a later time.

JUDICIAL AND ATTORNEY PERFORMANCE

In Tennessee, the Board of Professional Responsibility; the Governor's Council for Judicial Appointments; and the Tennessee Commission on Continuing Legal Education and Specialization serve as key guardians of the integrity of the judicial system.

BOARD OF PROFESSIONAL RESPONSIBILITY

In 1976, the Tennessee Supreme Court created the Board of Professional Responsibility to aid in its supervision of the ethical conduct of attorneys. In this capacity, the board educates, investigates, and prosecutes attorneys in accordance with Supreme Court Rule 8, "Rules of Professional Conduct," and Supreme Court Rule 9, "Disciplinary Enforcement." Attorneys who violate established guidelines become subject to disciplinary sanctions, including

- disbarment (the termination of attorney status);
- suspension (the removal from the practice of law for a specified minimum period of time);
- public censure (a public declaration of the attorney's improper conduct that does not limit the attorney's privilege to practice law);
- private reprimand (a non-public discipline that declares the attorney's conduct improper but does not limit the attorney's privilege to practice law); or
- private admonition (similar to private reprimand, except the misconduct appears to be an isolated or minor incident).

See Tables 7 and 8 for the board's received and processed complaints against attorneys for fiscal years 2014 through 2016.

Table 7
Investigative Complaint Disposition

Investigative Complaints Summary	Fiscal Year		
	2014	2015	2016
Complaints Dismissed	951	837	807
Transferred to Formal Charges	199	426	213
Disciplinary Sanctions			
Diversions ⁷	41	20	20
Private Informal Admonitions	56	51	42
Private Reprimands	13	22	14
Informal Public Censures	30	30	35
Consent to Disbarment	1	1	0
Other ⁸	35	43	57
Total Complaints Processed	1,326	1,004	975

Source: Tennessee Board of Professional Responsibility 33rd – 35th Annual Discipline Reports.

Table 8
Formal Disciplinary Proceedings Disposition

Formal Disciplinary Proceedings Summary	Fiscal Year		
	2014	2015	2016
Dismissals	5	8	2
Public Censures	10	9	8
Suspensions	25	33	27
Disbarments	14	10	19
Transfer to Disability Inactive	18	16	20
Temporary Suspensions	17	17	17
Retired	0	1	10
Reinstatements	2	16	11
Other ⁹	4	1	6
Total Proceedings Processed	95	111	120

Source: Tennessee Board of Professional Responsibility Case Management System.

The board is composed of 9 attorney members and 3 non-attorney members to offer an enhanced and balanced perspective of the responsibilities of the legal profession. Along with a chief disciplinary counsel appointed by the Tennessee Supreme Court, the board employs 10 full-time Disciplinary Counsel members and 22 support staff members to help fulfill its mission. Disciplinary proceedings are held before a hearing committee composed of 3 members appointed by the Tennessee Supreme Court.

⁷ According to Supreme Court Rule 9, “Disciplinary cases that otherwise would be disposed of by a private informal admonition or a private reprimand are eligible for diversion to practice and professionalism enhancement programs.”

⁸ Other complaint disposition categories include those transferred to disability inactive; placed on retired status; abated by death; withdrawn; and duplicated.

⁹ Other formal disciplinary disposition categories include those abated by death; voluntary non-suited; denied; and withdrawn.

GOVERNOR’S COUNCIL FOR JUDICIAL APPOINTMENTS

Pursuant to Executive Order No. 34, signed on October 16, 2013, Governor Bill Haslam created the Governor’s Commission for Judicial Appointments to assist with the search to fill current and impending vacancies in the appellate and trial courts. The commission was renamed the Governor’s Council for Judicial Appointments on November 6, 2014, through Executive Order No. 41. The council accepts applications from interested parties, interviews the applicants, and then sends a panel of three nominees to the Governor for consideration. The Governor may then appoint one of the recommended applicants to the vacant judicial position.

The 17 council members are required to disclose potential conflicts of interest—situations that could impair their ability to vote objectively for applicants—as an essential method to maintain public trust in the judicial nomination process. Executive Order No. 41 and the council’s bylaws assign the Administrative Office of the Courts the responsibility to maintain council records.

CONTINUING LEGAL EDUCATION

Tennessee Supreme Court Rule 21, “Rule for Mandatory Continuing Legal Education,” and Supreme Court Rule 8, “Rules of Professional Conduct,” establish minimum continuing legal education requirements for every person who practices law. The Supreme Court, through Rule 21, established the Tennessee Commission on Continuing Legal Education and Specialization. The commission consists of 11 members, who are appointed by the Supreme Court, including 9 attorney members who are resident members of the Tennessee Bar (3 of whom reside in each of the grand divisions of the state) and 2 non-attorneys. The Supreme Court gave the commission the following duties:

- to “exercise general supervisory authority over the administration of” Supreme Court Rule 21;
- to “adopt regulations consistent with” Supreme Court Rule 21; and
- to “monitor[,] . . . design, promulgate for discussion, test and recommend” to the Supreme Court modifications to the Continuing Legal Education program in Tennessee as deemed appropriate by the commission.

Prior Audit Report

During the prior audit, we noted an observation that because the Governor’s Council for Judicial Appointments lacked adequate policies and procedures, the Administrative Office of the Courts (AOC) did not fully document potential conflicts of interest disclosed by commission members, increasing the risk that biased voting would go undetected.

We recommended that the council update its bylaws to provide for a more stringent conflict-of-interest policy by directing the AOC to document in meeting minutes or other records the commission member with a potential conflict, which applicant the potential conflict concerns,

and how the potential conflict arose. In those cases where no actual conflict existed, we recommended that the AOC record the commission member's reason for believing he or she could vote without bias.

Audit Results

1. Audit Objective: For substantiated allegations, did the Board of Professional Responsibility assess similar punishments for similar violations, base punishment on the severity of the violation, and follow its internal disciplinary guidelines?

Conclusion: Based on our examination of the comprehensive investigation files, the board based punishment on the severity of the violation and consistently applied Supreme Court Rule 9, "Disciplinary Enforcement." We determined that the board's cases contained a high level of complexity with multiple variables involved (e.g., the number of previous disciplinary actions and the type of complaint). Therefore, we will not conclude on whether the board assessed similar punishments for similar violations.

2. Audit Objective: Did the board investigate allegations timely?

Conclusion: While we concluded that the board opened all investigations within seven business days as required by Tennessee Supreme Court Rule 9, due to the different variables involved in each investigation (e.g., appeals and requests for further information), we could not determine whether the investigations were closed in a reasonable amount of time.

3. Audit Objective: Did management correct the prior observation regarding the Governor's Council for Judicial Appointments' need for adequate conflict-of-interest policies and procedures?

Conclusion: We found that the council did not update conflict-of-interest policies and procedures (see **Observation 4**).

4. Audit Objective: For the prior observation, did the Administrative Office of the Courts fully document potential conflicts of interest disclosed by Governor's Council for Judicial Appointments members?

Conclusion: Our testwork revealed that the Administrative Office of the Courts fully documented potential conflicts of interest disclosed by council members.

5. Audit Objective: Are Tennessee's Continuing Legal Education requirements comparable to other states' requirements?

Conclusion: According to our review, Tennessee's Continuing Legal Education requirements for the number of hours are comparable to other states; however, we did note that, unlike some other states, Tennessee does not

mandate training or mentoring programs specifically for new attorneys (see **Observation 5**).

Observation 4 – As previously noted, the Governor’s Council for Judicial Appointments lacked adequate conflict-of-interest policies and procedures, increasing the risk that biased voting will go undetected

In the prior audit report, we published an observation that due to the Governor’s Commission for Judicial Appointments’ lack of adequate policies and procedures, the AOC did not fully document potential conflicts of interest disclosed by commission members. Our testwork for the current audit revealed that while AOC improved its documentation of potential conflicts of interest, the bylaws still contained deficient conflict-of-interest procedures.

Review of the Council’s Bylaws

Section XIII, “Ethical Considerations,” of the Governor’s Council for Judicial Appointments’ bylaws states the following:

A Council Member shall disclose to other Council Members any personal and business relationships with an applicant that may directly or indirectly influence the decision of the Council Member. It is anticipated that [a] Council Member will know, or have information about, many of the applicants. Often a Council Member will have worked with, or against, one or more of the applicants in legal, business or civic matters. This assists, and is intended as a part of, this nomination process. It does not disqualify a Council Member from taking part in the hearings or voting. A Council Member should disqualify him or herself from the appropriate portion of the consideration or the voting where the Council Member believes that because of prior information, or relationships, the Council Member will not be able to fairly consider all of the applicants.

According to the bylaws, council members must disqualify themselves if they are not able to fairly consider all of the applicants; however, the bylaws fail to establish a principles-based¹⁰ approach that clearly defines what constitutes a conflict of interest, as well as what could be perceived as a conflict of interest. The bylaws should cover this basic information as a matter of best practices.

Potential Effects of Ambiguous Bylaws

By not implementing adequate conflict-of-interest policies and procedures, the council increases the risks that council members will not disclose relevant relationships—thereby leading

¹⁰ The Financial Accounting Standards Board newsletter dated November 27, 2002, and the Investopedia website accessed May 25, 2017, differentiate between a rules-based approach and a principles-based approach. A rules-based approach lists a detailed set of rules that individuals must follow. A principles-based approach, in contrast, involves a conceptual framework that individuals can use in a wide variety of situations, with a simple set of key objectives and common examples to assist in applying those objectives.

to the unfair nomination of a judicial applicant—and that this biased voting will remain undetected. Even the appearance of biased voting could deeply erode the public’s trust in the commission’s decisions.

The council should update its bylaws to provide a principles-based approach to assessing potential conflicts of interest, with the goal of making the process open and clear. A principles-based approach, for example, would provide council members with the information needed to determine whether attending law school at the same time; working for the same firm but in different offices; or knowing a person for a certain period of time results in a conflict of interest.

Management’s Comment from the Governor’s Council for Judicial Appointments

We concur. The Governor’s Council for Judicial Appointments generally meets only when a vacancy has occurred in the state’s appellate courts. The council last met on March 8, 2016, due to the vacancy created on the Tennessee Court of Criminal Appeals, Western Section, by the appointment of Justice Roger Page to the Tennessee Supreme Court. In voting to recommend candidates to the Governor, the council has endeavored to disclose and document any potential, perceived, or actual conflicts of interest. At least as early as June 17, 2015, the council thoroughly considered its practices for adherence to Section XII - Ethical Considerations of the Council’s Bylaws. Council members publicly disclose conflicts and potential conflicts and, in accordance with Section XII, have recused themselves from voting when a conflict may have existed. In addition, attorneys constitute the entire membership of the present council, and they must conduct themselves in accordance with the ethical standards of the Professional Rules of Conduct established in Tennessee Supreme Court Rule 8. Nevertheless, in response to this observation, the council will, at its next meeting scheduled upon the occurrence of a vacancy, consider a bylaws revision to establish a principles-based approach regarding conflicts of interest.

Observation 5 – Tennessee Continuing Legal Education requirements, though comparable to those of other states, do not include specific training for new attorneys

In accordance with Tennessee Supreme Court Rule 21, “Rule for Mandatory Continuing Legal Education,” the Tennessee Commission on Continuing Legal Education has designed, tested, and recommended modifications to the Continuing Legal Education (CLE) program in Tennessee. Supreme Court Rule 21 states,

Unless otherwise exempted, each attorney admitted to practice law in the State of Tennessee shall obtain by December 31 of that calendar year a minimum of fifteen (15) hours of continuing legal education. Of those fifteen hours, three (3) hours shall be approved for ethics/professionalism credit (“EP credits”) and twelve (12) hours shall be approved for general credit. The combined fifteen (15) hours shall include a minimum of five (5) in-classroom hours of CLE credit.

Additionally, Tennessee Supreme Court Rule 21 allows established lawyers and new lawyers to participate in a mentoring program. Specifically, the rule says:

Up to six (6) hours per year of dual credit for participation as a mentor or mentee in a program meeting standards established by the Commission, including programs sponsored by bar associations, law schools, law firms, or other appropriate governmental or organization sponsors.

Tennessee CLE regulations require that an approved mentor

1. is currently licensed to practice law in Tennessee; is in good standing with the Supreme Court; and, for the previous three (3) years, has been licensed to practice law in Tennessee, in another state, or in the District of Columbia;
2. has not been suspended or disbarred from the practice of law in any jurisdiction;
3. has not been subject to any lesser disciplinary action, including any public or private reprimands, within the last ten (10) years . . . ; and
4. has completed initial or recertification mentor training . . . within the previous seven (7) calendar years.

Tennessee CLE regulations define an eligible beginning lawyer participant as one who

1. actually practices law in Tennessee or intends to practice law in Tennessee;
2. is in the first three (3) years of his or her practice as a lawyer following graduation from law school . . . ;
3. has graduated from law school no more than five (5) years prior to participating in an Approved Mentoring Program; and
4. has not previously received full credit for participating in an Approved Mentoring Program.

Based on our analysis, Tennessee's CLE requirements are comparable to the national average¹¹ of 12.5 hours required for a 1-year reporting period. We did note that, unlike Tennessee, some states have implemented specific CLE requirements for new lawyers. See Table 9 for the new lawyer CLE requirements for each state.

¹¹ We obtained this information from the American Bar Association's website (https://www.americanbar.org/cle/mandatory_cle/mcle_states.html). Requirements are current as of December 31, 2016.

Table 9
Continuing Legal Education Requirements for New Attorneys

	State	New Attorney Requirements
1	Indiana	6-hour professional course
2	Kentucky	12-hour New Lawyer Training
3	New York	32 hours over two years, including <ul style="list-style-type: none"> • 3 hours of ethics and professionalism • 6 hours of skills • 7 hours of law practice management
4	North Carolina	Professionalism for New Attorneys
5	Ohio	12 hours, including <ul style="list-style-type: none"> • professional conduct • law office management • client fund management
6	Oregon	New Lawyer Mentoring Program
7	Utah	1-year New Lawyer Training Program and attend a New Lawyer Ethics class

Tennessee CLE requirements include three hours of ethics and professionalism; however, it may be beneficial for the state to require specific CLE programs related to the management of a law office and client funds, as well as a mandatory mentoring program.

MISCELLANEOUS FISCAL AND ADMINISTRATIVE FUNCTIONS

The Administrative Office of the Courts provides fiscal and administrative support to the trial and appellate judges and courts across the state. A director, appointed by the Tennessee Supreme Court, heads the office. Section 16-3-803(a), *Tennessee Code Annotated*, states that the director “shall . . . assist the chief justice in the administration of the state court system to the end that litigation may be expedited and the administration of justice improved.” The director oversees approximately 75 personnel, whose duties include completing the annual risk assessment, monitoring contracts held by the court system, assisting the State Law Library Commission, and paying judicial salaries.

STATE LAW LIBRARY COMMISSION

Enacted as part of the Public Acts of 1965, Section 10-4-101, *Tennessee Code Annotated*, created the State Law Library Commission to supervise the state law libraries located in the Nashville, Knoxville, and Jackson Supreme Court buildings. Rather than being appointed, the members serve on the commission as a result of the positions they hold within the court system. Prior to March 22, 2016, state statute authorized the commission to

- employ necessary personnel, either full- or part-time, and to fix their compensation . . . [;]
- purchase or otherwise acquire books, furniture, supplies, and all other necessary equipment . . . [;]
- dispose of [books and equipment] by sale, exchange, gift, or otherwise . . . [; and]
- make and enforce all necessary rules and regulations for the management and operations of the state law libraries.

Effective March 22, 2016, the Tennessee General Assembly revised state statutes to remove Sections 10-4-101 through 104. The law libraries are now closed to the public but provide legal resources to the state judiciary.

CASH RECEIPTING

The Appellate Court Clerk's Office works for the Tennessee Supreme Court, Court of Appeals, and Court of Criminal Appeals. The appellate court clerk oversees the operations of individual offices located in the Nashville, Knoxville, and Jackson Supreme Court buildings. Additionally, a chief deputy clerk supervises each of the three locations. The Appellate Court Clerk's Office is responsible for filing and processing all briefs, motions, and other documents for cases on appeal. A cost center, attached to the Nashville location, processes payments and provides other administrative support for the entire Appellate Court Clerk's Office.

INFORMATION SYSTEMS

The Tennessee Court System relies on various information systems, databases, and applications to maintain information that supports the court's activities. The Information Systems Division is responsible for providing information technology and desktop support to the court's staff. Additionally, the Information Systems Division plays an important role in the design and testing of the court's Disaster Recovery Plan and Continuity of Operation Plan. The division is also responsible for the court's computer systems and network, which allows employees access to the court's files.

Audit Results

1. Audit Objective: Did Administrative Office of the Courts management correct the prior State Law Library Commission observation by meeting with the frequency prescribed by *Tennessee Code Annotated*?

Conclusion: We verified that management, at the Tennessee Supreme Court's request, submitted legislation to remove the State Law Library Commission section of *Tennessee Code Annotated*. The General Assembly passed, and

the Governor signed, the legislation with an effective date of March 22, 2016. Based on this change, the meeting frequency is no longer a statutory requirement.

- 2. Audit Objective:** Did the Nashville Appellate Court Clerk’s Office correct the prior cash receipt finding by properly segregating duties and updating policies and procedures?

Conclusion: Based on testwork performed, the Nashville Appellate Court Clerk’s Office updated its policies and procedures to reflect current information systems. Additionally, the Nashville Appellate Court Clerk has configured the cash receipting process to appropriately maintain segregation of duties.

- 3. Audit Objective:** Did management follow state information systems security policies and industry best practices regarding information systems controls?

Conclusion: Management did not follow state information systems security policies and industry best practices regarding information systems controls in two areas (see **Finding 1**).

Finding 1 – The Administrative Office of the Courts did not provide adequate internal controls in two specific areas

The Administrative Office of the Courts (AOC) did not design and monitor internal system controls in two specific areas. For these two areas, we found internal control deficiencies related to AOC’s information systems.

Ineffective implementation of internal controls increases the likelihood of errors, data loss, and inability to continue operations. The details of this finding are confidential pursuant to Section 10-7-504(i), *Tennessee Code Annotated*. We provided the office with detailed information regarding the specific conditions we identified, as well as the related criteria, causes, and our specific recommendations for improvement.

Recommendation

Management should ensure that these conditions are remedied by promptly developing and consistently implementing internal controls. Management should implement effective controls to ensure compliance with applicable requirements; assign staff to be responsible for ongoing monitoring of the risks and mitigating controls; and take action if deficiencies occur.

Management's Comment

We concur. We have updated our procedures and implemented internal controls to ensure compliance with all applicable requirements. We have appropriate staff assigned to monitor the risks and mitigating controls so that we can actively identify issues and take action if any deficiencies occur.

APPENDIX

METHODOLOGY TO ACHIEVE OBJECTIVES

INDIGENT DEFENSE PROGRAM

- 1. Audit Objective:** Did management address the prior indigent defense finding by making progress in ensuring that courts across the state consistently applied Tennessee Supreme Court rules and *Tennessee Code Annotated* provisions?

We reviewed Tennessee Supreme Court Rule 13, “Appointment, Qualifications, and Compensation of Counsel for Indigent Defendants,” dated January 1, 2015, and identified changes made since the prior audit. We studied the April 3, 2017, Indigent Representation Task Force report. We also interviewed applicable Administrative Office of the Courts (AOC) staff to determine the steps taken to address the finding, as well as the Supreme Court’s plans for the Indigent Representation Task Force report.

- 2. Audit Objective:** Did management take steps to maximize revenues for the indigent defense fund, as discussed in the prior observation?

We reviewed Tennessee Supreme Court Rule 13 and identified changes made since the prior audit. We studied the April 3, 2017, Indigent Representation Task Force report. We obtained and reviewed the 2011 through 2015 Administrative Fee Status reports and calculated the annual amount deposited per individual ordered to pay and the amount deposited per individual appointed counsel for 2011 through 2015. We also calculated the percentage change for each category of data reported in the Administrative Fee for Appointed Counsel reports between 2011 and 2015.

- 3. Audit Objective:** Did management accurately present the indigent defense fund budget?

To determine whether management accurately presented the indigent defense fund budget, we watched the budget hearings for fiscal years 2016 and 2017. We compared the budget data presented in the state budget for fiscal years 2012 through 2016 and in the budget hearings to actual expenditures. We discussed our comparison with AOC management.

REPORTING REQUIREMENTS

- 1. Audit Objective:** Did Administrative Office of the Courts (AOC) personnel and court clerks correct the prior finding by implementing improvements to fully comply with state statutes designed to keep firearms out of the hands of individuals with mental health issues?

We interviewed applicable AOC staff. We obtained and reviewed the current tracking mechanism that the AOC uses to ensure county clerks complete mental health reporting, and we gained an understanding of the automated system that is being built for the AOC to replace the current tracking mechanism. We obtained and reviewed the independent monitor's June 2016 National Instant Criminal Background Check System (NICS) compliance monitoring report, as well as the final results of the 2016 NICS Audit of Tennessee conducted by the Federal Bureau of Investigation, Criminal Justice Information Services Division, Audit Unit.

- 2. Audit Objective:** Did management address the mental health reporting problems identified by the independent monitor, including implementing actions that would prevent the same problem from recurring in the future?

We obtained and reviewed the AOC's responses to the compliance monitoring report. We interviewed applicable AOC staff to determine the actions the county clerks implemented to prevent the same problems from occurring again in the future.

- 3. Audit Objective:** Did the AOC correct the prior finding by developing appropriate criminal and civil caseload data collection procedures for general sessions courts?

Through interviews with key AOC staff and reviews of project plans, timeline, and summary, we obtained an understanding of the general sessions data repository that the AOC has designed and started implementing. We examined the AOC's budget to verify the availability of funding to complete the repository.

JUDICIAL AND ATTORNEY PERFORMANCE

- 1. Audit Objective:** For substantiated allegations, did the Board of Professional Responsibility assess similar punishments for similar violations, base punishment on the severity of the violation, and follow its internal disciplinary guidelines?
- 2. Audit Objective:** Did the board investigate allegations timely?

The following methodologies apply to objectives 1 and 2. We obtained and reviewed Tennessee Supreme Court Rules 8, "Rules of Professional Conduct," and 9, "Disciplinary Enforcement." We received a list of all complaints received from June 1, 2014, through March 30, 2017, and we categorized the complaints by type and determined the percentage of each type compared to the total list. To obtain a total population of 80 complaints tested, we used these percentages to select prorationally the number of each complaint type. We then reviewed each complaint file to determine compliance with Supreme Court Rules 8 and 9.

- 3. Audit Objective:** Did management correct the prior observation regarding the need for adequate conflict-of-interest policies and procedures?

We studied the most recent version of the council bylaws (adopted January 30, 2015).

- 4. Audit Objective:** For the prior observation, did the Administrative Office of the Courts fully document potential conflicts of interest disclosed by the Governor's Council for Judicial Appointments members?

To determine whether the Administrative Office of the Courts documented all conflicts of interest, we obtained meeting minutes for all 15 council meetings for the period June 1, 2014, through March 8, 2016. We selected a random sample of 8 meetings, for which we reviewed all judicial candidates and compared the candidates' prior work experience and education to those of the council members. (The number of individuals applying for a judicial position varied among each meeting. The 8 meetings selected gave us a total of 54 applicants to test.)

- 5. Audit Objective:** Are Tennessee's Continuing Legal Education requirements comparable to other states' requirements?

We analyzed Tennessee Supreme Court Rule No. 21, "Rule for Mandatory Continuing Legal Education," and the Commission on Continuing Legal Education's regulations. We gathered continuing legal education requirements for all 50 states and compared their requirements.

MISCELLANEOUS FISCAL AND ADMINISTRATIVE FUNCTIONS

- 1. Audit Objective:** Did Administrative Office of the Courts management correct the prior State Law Library Commission observation by meeting with the frequency prescribed by *Tennessee Code Annotated*?

We analyzed current state statute and interviewed Administrative Office of the Courts staff.

- 2. Audit Objective:** Did the Nashville Appellate Court Clerk's Office correct the prior cash receipt finding by properly segregating duties and updating policies and procedures?

We obtained and reviewed the cash receipting policy and procedures. We observed the cash receipting process from beginning to end.

- 3. Audit Objective:** Did management follow state information systems security policies and industry best practices regarding information systems controls?

We compared management's information systems controls to state security policies and industry best practices.